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SUBJECT: PRT/FARAH: THE CONFUSED STATE OF THE FARAH JUSTICE
SYSTEM

¶1. (SBU) SUMMARY: Farah Province is beset by misunderstandings and disparities regarding the court system, the number of judges, and even current cases. Record-keeping in handwritten notes is haphazard at best. Judges and prosecutors understand there is a process that includes delineated time limits, but how they meet those limits and follow the law is unclear. Construction of a USAID funded Judicial Building is nearing completion, but the primary concern of prosecutors and judges seems to be the eventual location of office space. Justice Ministry guidance and assistance to prosecutors, and Supreme Court guidance for the judges is clearly needed. It is important to match the court system in Farah Province with that of Kabul. Including Farah in the second phase of USAID's model court roll-out would be an effective way to demonstrate the USG's commitment to the rule of law in Farah Province. END SUMMARY

¶2. (SBU) The Farah Province court system is designed to have forty five Primary Court judges (including Urban Primary Court judges in Farah City and primary courts in each district) and 19 at the Appeals Court level. It should also include seven Appeals Court divisions (criminal, public security, civil/public rights, commercial, juvenile, traffic, and family), though only three (criminal, public security, and civil/public rights, which may cover commercial issues) are operating. Each division should have one chairperson, a chief judge, and two member judges. Each district should have its own prosecutor, judge, and district (Primary) court. Although the prosecutors are said to be working in the districts, due to security concerns, the district judges are not there, so defendants are brought into Farah City.

¶3. (SBU) Confusion about the court system, the number of judges and current case load exists between Farah's prosecutors and judges. Different court officials cite conflicting numbers of judges and staff working in various divisions of the court system.

¶4. (SBU) Prosecutors and judges write all records by hand. Many copies are made with carbon paper. (Note: Previous PRT staff gave a computer, printer, and scanner to the court, but the court has no funding to buy the fuel to run the generator needed for electricity. End Note.) Records are kept haphazardly in piles around the offices. Case registry books

can be found in different offices, but the numbers in the books are not recorded on the files, so to locate a file one must look through each pile, some in drawers, some on tables, and others on the floor, until that file is found. There is a question of what is an open case; apparently the classification of files differs for prisoners in jail from those out on bail. Farah's prosecutors and judges vary widely in their understanding of the number of open cases.

15. (SBU) According to prosecutors and judges interviewed, after police make an arrest in a criminal case, they may hold the suspect for up to seventy two hours while they investigate what happened. Police give the prosecutor, s office the results of their investigation and the prosecutor decides if there is enough evidence to take the case to court. The prosecutor can also ask for additional information and extend the suspect, s time in custody by fifteen days, plus an additional fifteen days if needed. If the prosecutor decides to release the suspect, the victim, s family may complain and force the case into court. Most of the accused defend themselves.

16. (SBU) The Primary Court must decide a case within two months. Each case takes an average of two days to hear and the court works six days a week. Hearings are not held on Sunday, Thursday or Friday. Ghafor takes most of the Urban Primary Court cases and he said he takes more than two months in some cases to render his decision. After the initial decision, the court gives the prosecutor the records and documents associated with the case. The defendant has twenty days to appeal judgment. Any party to the case can take it to the Appeals Court; if the accused does not appeal, the victim, s family may do so. If the prosecutor thinks the

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defendant should not have been acquitted or the sentence should be longer, he may also appeal. The final appeal is to the Supreme Court in Kabul. According to urban Primary Court Director Abdul Ghafor, the investigations done at each level are merely a review of the papers from police and the courts. Almost all cases are appealed.

17. (SBU) Ghafor claimed that civil and penal codes, none contrary to Shari, a law, are observed. He stated they have used the same court system for the past fifty years but lamented that no one today respects the courts and no one is afraid any longer to go to court. Judges salaries are low and there is a dangerous lack of security. He receives 2700 Afghanis/month (USD 54) and sleeps near an AK-47 as his defense against the many threats he receives. Ghafor complained he receives no help from Kabul; his office has only a broken desk and chair. There has been no training, and no one from Kabul seems to be addressing the problem of the severe deficit in numbers of judges here.

18. (SBU) COMMENT: As noted above, USAID is constructing a new Judicial Building to house the Appeals Court, possibly the Urban Primary Court, and prosecutors, and judges, offices. As the building nears completion, however, in addition to their furnishings and equipment, the prosecutors and judges have been very focused on which department should get the ground floor offices and which the second floor. Besides the confusion between the prosecutors and judges on their legal system, there are inconsistencies in how police arrest and detain suspects, how investigations are conducted, how witnesses are found and brought to court, and on what evidence judges should base decisions. Case investigation training is a necessity, though many police still lack basic training, and prosecutors do not have the knowledge or resources to investigate crimes. Little cooperation exists between police and the courts in transporting criminals to court and on presenting witnesses. Additionally a witness program is necessary. Standard court procedures are lacking. Justice Ministry guidance and assistance for working with the prosecutors, along with Supreme Court guidance for the judges, would be invaluable. It is important to match court

procedures and systems in Farah with those in Kabul.
Including Farah in the second phase of USAID,s model court
roll-out would be an effective way to demonstrate the USG,s
commitment to the rule of law in Farah Province.
NORLAND